



Appeal of Charles W. and Barbara K. Murray

The issue to be resolved is whether appellants are entitled to a credit for net income taxes paid to the State of Minnesota.

On December 1, 1978, appellants filed a joint resident California personal income tax return for the year 1977. Their return indicated that they resided in Burbank, California. During 1977 appellant-wife had been employed as a stewardess and was based in Minnesota. She commuted to that location from her California home which she shared with her husband, and claimed the cost of such travel as a business expense. On her Minnesota return for that year she also indicated her home address as being in Burbank, California.

Some time later, the Internal Revenue Service audited appellants' 1977 federal return and made several adjustments. Included among those changes was the disallowance of appellant-wife's claimed travel expense for the cost of commuting between California and Minnesota. Since her place of employment was in Minnesota, it was determined that such location constituted her "tax home" and thus travel between that location and a place of residence elsewhere was not deductible.

When respondent received notice of the federal changes, it issued a notice of proposed assessment applying those adjustments for state purposes. In addition, respondent disallowed a portion of a claimed moving expense item and all of a claimed credit for net income taxes paid to the State of Minnesota. The adjustment to the moving expense item was later withdrawn. Appellants protested the disallowed credit for Minnesota taxes paid, and respondent's denial of that protest gave rise to this appeal. For the following reasons, we believe respondent acted properly in denying the claimed credit.

Pursuant to section 17041 of the Revenue and Taxation Code, the entire taxable income of a California resident, from whatever source derived, is subject to tax. Under certain circumstances, a California resident may obtain a credit against his California tax liability for net income taxes paid to another state. Section 18001 of the Revenue and Taxation Code provides in part:

Subject to the following conditions, residents shall be allowed a credit against the taxes imposed by this part for net income taxes imposed by and paid to another state on income taxable under this part:

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(a) The credit shall be allowed only for taxes paid to the other state on income derived from sources within that state which is taxable under its laws irrespective of the residence or domicile of the recipient.

* * *

(b) The credit shall not be allowed if the other state allows residents of this state a credit against the taxes imposed by that state for taxes paid or payable under this part.

The regulations interpreting section 18001 provide, in part:

Credit may not be allowed for taxes paid to a state which allows nonresidents credit against the taxes imposed by such state for taxes paid or payable to the state of residence. In such case credit should be obtained from the state imposing a tax upon residents of this State. (Cal. Admin. Code, tit. 18, reg. 18001-2, subd. (b).)

Thus, it is apparent that the statute and regulation prohibit the allowance of a credit to a California resident where the foreign state allows a credit against its tax for tax imposed by California on the same income. The purpose of this prohibition is to prevent the allowance of credits by both states at the same time. Since Minnesota provides a credit for tax paid in California on the income taxed in Minnesota (Minn. Stat. § 290.081, subd. (b) (1967)), appellant-wife, as a California resident, is not entitled to a tax credit for personal income tax paid to Minnesota. (Appeal of Frank E. Tompkins, Cal. St. Bd. of Equal., Feb. 8, 1978; Appeal of Wilfred A. and Betty J. Meacham, Cal. St. Bd. of Equal., Aug. 19, 1975.)

Despite the above, appellants argue that since appellant-wife's "tax home" was determined to be in Minnesota, income taxes were properly paid to that state and a credit **therefor** should be granted against their California income tax liability. Appellants **misconceive** the effect of the "tax home" determination.

In determining a deduction for away from home **business** travel, the "home" or "tax home" for purposes of

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the deduction is generally considered to be the, place of an individual's employment rather than the place of domicile. (Appeal of Harold L. and Wanda G. Benedict, Cal. St. Bd. of Equal., Jan. 5, 1982, citing Lloyd G. Jones, 54 T.C. 734 (1970).) Therefore, an individual may have a "tax home" in one location and a domicile somewhere else without one affecting the other. As noted above, appellants' residence in California is the criterion on which the taxation and corollary tax credit provisions are based. Respondent's denial of the claimed credit for income taxes paid Minnesota reflects a correct application of those provisions. Consequently, respondent's action in this matter **must** be upheld.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Charles W. and Barbara K. Murray against a proposed assessment of additional personal income tax and penalty in the total amount of \$326.41 for the year 1977, be and the same is hereby sustained.

Done at Sacramento, California, this 21st day
of June , 1983, by the State Board of Equalization.
with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg
and Mr. Nevins present.

William M. Bennett , Chairman
Conway H. Collis , Member
Ernest J. Dronenburg, Jr. , Member
Richard Nevins , Member
 , Member